

ASSEMBLY BILL

No. 476

Introduced by Assembly Member Bonnie Lowenthal

February 15, 2011

An act to add Section 21100.6 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 476, as introduced, Bonnie Lowenthal. Vehicles: tow trucks: illegal operation.

Existing law requires a magistrate presented with the affidavit of a peace officer or a designated local transportation officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, is being operated as a taxicab or other passenger vehicle for hire in violation of licensing requirements adopted by a local authority to issue a warrant or order authorizing the peace officer or designated local transportation officer to immediately seize and cause the removal of the vehicle.

Existing law also provides that the vehicle may be impounded for a period not to exceed 30 days and establishes, among other things, procedures for storage, a poststorage hearing, payment of storage charges, and release of the vehicle. A violation of these provisions is an infraction.

This bill would establish similar procedures for the seizure and removal of a tow truck that is being operated in violation of local licensing requirements. The bill would also provide that a towing company owner, its agent, or a tow truck operator who violates licensing requirements adopted by a local authority is guilty of a misdemeanor

punishable by a \$5,000 fine. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21100.6 is added to the Vehicle Code,
2 to read:

3 21100.6. (a) A towing company owner, its agent, or a tow
4 truck operator who fails to comply with the licensing requirements
5 adopted by a local authority under subdivision (b) of Section 21100
6 is guilty of a misdemeanor punishable by a fine of five thousand
7 dollars (\$5,000).

8 (b) (1) A magistrate presented with the affidavit of a peace
9 officer or a designated local transportation officer establishing
10 reasonable cause to believe that a vehicle, described by vehicle
11 type and license number, is being operated as a tow truck in
12 violation of licensing requirements adopted by a local authority
13 under subdivision (b) of Section 21100 shall issue a warrant or
14 order authorizing the peace officer or designated local
15 transportation officer to immediately seize and cause the removal
16 of the vehicle. As used in this section, “designated local
17 transportation officer” means any local public officer employed
18 by a local authority to investigate and enforce local towing, storage,
19 and vehicle for hire laws and regulations.

20 (2) The warrant or court order may be entered into a
21 computerized database.

22 (3) A vehicle so impounded may be impounded for a period not
23 to exceed 30 days.

24 (4) The impounding agency, within two working days of
25 impoundment, shall send a notice by certified mail, return receipt
26 requested, to the legal owner of the vehicle, at an address obtained
27 from the department, informing the owner that the vehicle has
28 been impounded and providing the owner with a copy of the

1 warrant or court order. Failure to notify the legal owner within
2 two working days shall prohibit the impounding agency from
3 charging for more than 15 days' impoundment when a legal owner
4 redeems the impounded vehicle. The law enforcement agency shall
5 be open to issue a release to the registered owner or legal owner,
6 or the agent of either, whenever the agency is open to serve the
7 public for regular, nonemergency business.

8 (c) (1) An impounding agency shall release a vehicle to the
9 registered owner or his or her agent prior to the end of the
10 impoundment period and without the permission of the magistrate
11 authorizing the vehicle's seizure under any of the following
12 circumstances:

13 (A) When the vehicle is a stolen vehicle.

14 (B) When the vehicle was seized under this section for an
15 offense that does not authorize the seizure of the vehicle.

16 (2) A vehicle shall not be released under this subdivision, except
17 upon presentation of the registered owner's or agent's current valid
18 license to operate the vehicle under the licensing requirements
19 adopted by the local authority under subdivision (b) of Section
20 21100, and proof of current vehicle registration, or upon order of
21 the court.

22 (d) (1) Whenever a vehicle is impounded under this section,
23 the magistrate ordering the storage shall provide the vehicle's
24 registered and legal owners of record, or their agents, with the
25 opportunity for a poststorage hearing to determine the validity of
26 the storage.

27 (2) A notice of the storage shall be mailed or personally
28 delivered to the registered and legal owners within 48 hours after
29 issuance of the warrant or court order, excluding weekends and
30 holidays, by the person or agency executing the warrant or court
31 order, and shall include all of the following information:

32 (A) The name, address, and telephone number of the agency
33 providing the notice.

34 (B) The location of the place of storage and a description of the
35 vehicle, which shall include, if available, the name or make, the
36 manufacturer, the license plate number, and the mileage of the
37 vehicle.

38 (C) A copy of the warrant or court order and the peace officer's
39 affidavit, as described in subdivision (b).

1 (D) A statement that, in order to receive their poststorage
2 hearing, the owners, or their agents, are required to request the
3 hearing from the magistrate issuing the warrant or court order in
4 person, in writing, or by telephone, within 10 days of the date of
5 the notice.

6 (3) The poststorage hearing shall be conducted within two court
7 days after receipt of the request for the hearing.

8 (4) At the hearing, the magistrate may order the vehicle released
9 if he or she finds any of the circumstances described in subdivision
10 (c) or (f) that allow release of a vehicle by the impounding agency.

11 (5) Failure of either the registered or legal owner, or his or her
12 agent, to request, or to attend, a scheduled hearing satisfies the
13 poststorage hearing requirement.

14 (6) The agency employing the peace officer or designated local
15 transportation officer who caused the magistrate to issue the
16 warrant or court order shall be responsible for the costs incurred
17 for towing and storage if it is determined in the poststorage hearing
18 that reasonable grounds for the storage are not established.

19 (e) The registered owner or his or her agent is responsible for
20 all towing and storage charges related to the impoundment, and
21 any administrative charges authorized under Section 22850.5.

22 (f) A vehicle removed and seized under subdivision (b) shall
23 be released to the legal owner of the vehicle or the legal owner's
24 agent prior to the end of the impoundment period and without the
25 permission of the magistrate authorizing the seizure of the vehicle
26 if all of the following conditions are met:

27 (1) The legal owner is a motor vehicle dealer, bank, credit union,
28 acceptance corporation, or other licensed financial institution
29 legally operating in this state or is another person, not the registered
30 owner, holding a security interest in the vehicle.

31 (2) (A) The legal owner or the legal owner's agent pays all
32 towing and storage fees related to the seizure of the vehicle. A lien
33 sale processing fee shall not be charged to the legal owner who
34 redeems the vehicle prior to the 15th day of impoundment. Neither
35 the impounding authority nor a person having possession of the
36 vehicle shall collect from the legal owner as specified in paragraph
37 (1), or the legal owner's agent, any administrative charges imposed
38 pursuant to Section 22850.5 unless the legal owner voluntarily
39 requested a poststorage hearing.

1 (B) A person operating or in charge of a storage facility where
2 vehicles are stored pursuant to this section shall accept a valid
3 bank credit card or cash for payment of towing, storage, and related
4 fees by the legal or registered owner or the owner's agent claiming
5 the vehicle. A credit card shall be in the name of the person
6 presenting the card. "Credit card" means "credit card" as defined
7 in subdivision (a) of Section 1747.02 of the Civil Code, except,
8 for the purposes of this section, credit card does not include a credit
9 card issued by a retail seller.

10 (C) A person operating or in charge of a storage facility
11 described in subparagraph (B) who violates subparagraph (B) shall
12 be civilly liable to the owner of the vehicle or to the person who
13 tendered the fees for four times the amount of the towing, storage,
14 and related fees, but not to exceed five hundred dollars (\$500).

15 (D) A person operating or in charge of a storage facility
16 described in subparagraph (B) shall have sufficient funds on the
17 premises of the primary storage facility during normal business
18 hours to accommodate, and make change in, a reasonable monetary
19 transaction.

20 (E) Credit charges for towing and storage services shall comply
21 with Section 1748.1 of the Civil Code. Law enforcement agencies
22 may include the costs of providing for payment by credit when
23 making agreements with towing companies on rates.

24 (3) (A) The legal owner or the legal owner's agent presents to
25 the law enforcement agency or impounding agency, or any person
26 acting on behalf of those agencies, a copy of the assignment, as
27 defined in subdivision (b) of Section 7500.1 of the Business and
28 Professions Code, a release from the one responsible governmental
29 agency, only if required by the agency, a government-issued
30 photographic identification card, and any one of the following as
31 determined by the legal owner or the legal owner's agent: a
32 certificate of repossession for the vehicle, a security agreement
33 for the vehicle, or a title, whether paper or electronic, showing
34 proof of legal ownership for the vehicle. The law enforcement
35 agency, the impounding agency, or any other governmental agency,
36 or any person acting on behalf of those agencies, shall not require
37 the presentation of any other documents.

38 (B) The legal owner or the legal owner's agent presents to the
39 person in possession of the vehicle, or any person acting on behalf
40 of the person in possession of the vehicle, a copy of the assignment,

1 as defined in subdivision (b) of Section 7500.1 of the Business
2 and Professions Code, a release from the one responsible
3 governmental agency, only if required by the agency, a
4 government-issued photographic identification card, and any one
5 of the following as determined by the legal owner or the legal
6 owner's agent: a certificate of repossession for the vehicle, a
7 security agreement for the vehicle, or a title, whether paper or
8 electronic, showing proof of legal ownership for the vehicle. The
9 person in possession of the vehicle, or any person acting on behalf
10 of the person in possession of the vehicle, shall not require the
11 presentation of any other documents.

12 (C) All presented documents may be originals, photocopies,
13 facsimile copies, or transmitted electronically. The law enforcement
14 agency, the impounding agency, or any person in possession of
15 the vehicle, or anyone acting on behalf of these agencies or the
16 person in possession of the vehicle, shall not require any documents
17 to be notarized. The law enforcement agency, the impounding
18 agency, or any person acting on behalf of those agencies, may
19 require the agent of the legal owner to produce a photocopy or
20 facsimile copy of its repossession agency license or registration
21 issued pursuant to Chapter 11 (commencing with Section 7500)
22 of Division 3 of the Business and Professions Code, or to
23 demonstrate, to the satisfaction of the law enforcement agency,
24 the impounding agency, or any person in possession of the vehicle,
25 or anyone acting on behalf of these agencies or the person in
26 possession of the vehicle, that the agent is exempt from licensure
27 pursuant to Section 7500.2 or 7500.3 of the Business and
28 Professions Code.

29 (D) The administrative costs authorized under subdivision (a)
30 of Section 22850.5 shall not be charged to the legal owner as
31 specified in paragraph (1) who redeems the vehicle unless the legal
32 owner voluntarily requests a poststorage hearing. A city, county,
33 city and county, or state agency shall not require a legal owner or
34 a legal owner's agent to request a poststorage hearing as a
35 requirement for release of the vehicle to the legal owner or the
36 legal owner's agent. The law enforcement agency, the impounding
37 agency, or any other governmental agency, or any person acting
38 on behalf of those agencies, shall not require any documents other
39 than those specified in this paragraph. The law enforcement agency,
40 impounding agency, or other governmental agency, or any person

1 acting on behalf of those agencies, shall not require any documents
2 to be notarized. The legal owner or the legal owner's agent shall
3 be given a copy of any documents he or she is required to sign,
4 except for a vehicle evidentiary hold logbook. The law enforcement
5 agency, the impounding agency, or any person acting on behalf
6 of those agencies, or any person in possession of the vehicle, may
7 photocopy and retain the copies of any documents presented by
8 the legal owner or legal owner's agent.

9 (4) A failure by a storage facility to comply with any applicable
10 conditions set forth in this subdivision shall not affect the right of
11 the legal owner or the legal owner's agent to retrieve the vehicle
12 if all conditions required of the legal owner or legal owner's agent
13 under this subdivision are satisfied.

14 (g) (1) A legal owner or the legal owner's agent that obtains
15 release of the vehicle pursuant to subdivision (f) shall not release
16 the vehicle to the registered owner of the vehicle or the person
17 who was listed as the registered owner when the vehicle was
18 impounded or any agents of the registered owner until the
19 termination of the impoundment period.

20 (2) The legal owner or the legal owner's agent shall not
21 relinquish the vehicle to the registered owner or the person who
22 was listed as the registered owner when the vehicle was impounded
23 until the registered owner or that owner's agent presents his or her
24 valid driver's license or valid temporary driver's license, and an
25 operator's license that is in compliance with the licensing
26 requirements adopted by the local authority under subdivision (b)
27 of Section 21100, to the legal owner or the legal owner's agent.
28 The legal owner or the legal owner's agent or the person in
29 possession of the vehicle shall make every reasonable effort to
30 ensure that the licenses presented are valid and possession of the
31 vehicle will not be given to the driver who was involved in the
32 original impoundment proceeding until the expiration of the
33 impoundment period.

34 (3) Prior to relinquishing the vehicle, the legal owner may
35 require the registered owner to pay all towing and storage charges
36 related to the impoundment and the administrative charges
37 authorized under Section 22850.5 that were incurred by the legal
38 owner in connection with obtaining the custody of the vehicle.

39 (4) Any legal owner who knowingly releases or causes the
40 release of a vehicle to a registered owner or the person in

1 possession of the vehicle at the time of the impoundment or any
2 agent of the registered owner in violation of this subdivision shall
3 be guilty of a misdemeanor and subject to a civil penalty in the
4 amount of two thousand dollars (\$2,000).

5 (5) The legal owner, registered owner, or person in possession
6 of the vehicle shall not change or attempt to change the name of
7 the legal owner or the registered owner on the records of the
8 department until the vehicle is released from the impoundment.

9 (h) Notwithstanding any other provision of this section, the
10 registered owner and not the legal owner shall remain responsible
11 for any towing and storage charges related to the impoundment
12 and the administrative charges authorized under Section 22850.5
13 and any parking fines, penalties, and administrative fees incurred
14 by the registered owner.

15 (i) The law enforcement agency and the impounding agency,
16 including any storage facility acting on behalf of the law
17 enforcement agency or impounding agency, shall comply with this
18 section and shall not be liable to the registered owner for the
19 improper release of the vehicle to the legal owner or the legal
20 owner's agent if the release complies with this section. The legal
21 owner shall indemnify and hold harmless a storage facility from
22 any claims arising out of the release of the vehicle to the legal
23 owner or the legal owner's agent and from any damage to the
24 vehicle after its release, including the reasonable costs associated
25 with defending the claims. A law enforcement agency shall not
26 refuse to issue a release to a legal owner or the agent of a legal
27 owner on the grounds that it previously issued a release.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.